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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/639,508	08/16/2000	Richard S. Chomik	460.1891USV	3194

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EXAMINER

DEXTER, CLARK F

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 05/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/639,508

Applicant(s)
Chomik et al.

Examiner
Clark F. Dexter

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3724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 22, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-40 is/are pending in the application.
- 4a) Of the above, claim(s) 17, 21-23, and 27-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-16, 18-20, and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on Feb 22, 2002 is: a) ☐ approved b) ☒ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

1. The amendment filed February 22, 2002 has been entered. It is noted that in view of the new amendment practice under 37 CFR 1.121 which became mandatory for all amendments on March 1, 2001, and due to the limited amount of examining time per application, if the amendment contains changes to existing language that requires a marked-up version showing those changes, the Examiner is relying upon the marked-up version(s) for examination of the application. It is applicant's responsibility to ensure that the clean version(s) is (are) the same as the marked-up version(s). It is further noted that the clean version(s) is (are) considered to be the Official version(s).

Drawings

2. The proposed drawing correction filed on February 22, 2002 has been disapproved because it does not show the changes in red ink or otherwise highlighted (it is noted that this is necessary so that the PTO Draftsman, who reviews only the drawings, can readily review the changes). See MPEP § 608.02(v).

3. The drawings are objected to because of the following informalities:

In Figure 4, numeral 66 (to indicate the lower surface of feature 56) should be added for clarity.

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In Figures 3C-3E, numeral 30 is inaccurate since an alternate blade is being represented, and it is suggested to change "30" to --30'-- or the like.

In Figure 5, "84" is inaccurate, and it seems that the underline should be removed and a lead line should extend from numeral 84 to the surface in which channels 86 are formed (e.g., see Figure 5A).

Appropriate correction is required.

Claim Rejections - 35 USC § 112, 1st paragraph

4. Claims 18-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original disclosure does not appear to provide support for a perforations having at least two different diameters as now set forth in claim 14.

Claim Rejections - 35 USC § 112, 2nd paragraph

5. Claims 14, 15 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 14, lines 5-7, the recitation “wherein the plurality of perforations have at least two different diameters through the domed portion” renders the claims vague and indefinite as to what is being set forth, particularly since it is not clear as to what “two different diameters” refers.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 14-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Greenwood et al., pn 5,499,729.

Claim Rejections - 35 USC § 102/103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 18-20 and 24-26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Greenwood et al., pn 5,499,729.

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Greenwood et al. discloses every step of the claimed method in claims 24-26, and in claims 18-20 as best understood. In the alternative, if it is argued that Greenwood et al. does not disclose the specific claimed dimensions, to provide such dimensions would be the mere discovery of the optimum or workable ranges within the general conditions of the prior art by one of ordinary skill in the art.

Response to Arguments

10. Applicant's arguments filed February 22, 2002 have been fully considered but they are not persuasive. Additionally, the Declarations of Mr. Francis X. Manganiello and Mr. Richard S. Chomik have been carefully reviewed.

In the third paragraph on page 6 of the amendment, applicant argues that Greenwood, particularly Figure 17 thereof, "does not disclose or suggest a plurality of perforations along radii that form the concave curvature or the domed portion, as recited in claim 14." The Examiner respectfully disagrees. Greenwood meets this claim under at least two interpretations of the claim limitation.

Under a first interpretation of the claim language, Greenwood discloses, in Figure 15, an array of perforations, wherein these perforations are positioned along radii that form the concave curvature of the domed portion. For example, Greenwood discloses perforations along radii which originate from the center perforation and which radii extend through aligned perforations such as vertically, horizontally and diagonally as viewed in this Figure 15.

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Under a second interpretation of the claim language, Greenwood discloses, for example in Figures 15 and 17, an array of perforations, wherein these perforations are each formed along radii that form the concave curvature of the domed portion. For example, each perforation is formed in a radial direction as shown in Figure 17. Clearly, each perforation is formed along the subject radii. It is emphasized that, contrary to applicant's position, there is no requirement for the perforations to be formed parallel to or colinear with the subject radii. Rather, the claim requires the perforations to be formed "along" the subject radii. According to Webster's New World Dictionary, Third College Edition, "along" is defined as "on or beside the length of." Therefore, for at least these reasons, it is believed that Greenwood discloses all of the claimed structure and method steps performed using that structure.

Further regarding the third paragraph on page 6 of the amendment, applicant relies on Exhibit I, an enlarged view of Figure 17 of Greenwood, to show that Greenwood does not meet claim 14. The Examiner respectfully disagrees with applicant's analysis. First, applicant's Exhibit I does not prove that the "along" claim language is not met by Greenwood. To the contrary, it is clear from this view that the perforations clearly lie "along" the claimed radii as broadly and reasonably interpreted (see the definition of "along" in the above paragraph). Second, as applicant is well aware, drawings in patents cannot be considered as being drawn to scale. Rather, it is the general teachings disclosed by the drawings and specification that must be considered. Thus, applicant's Exhibit I does cannot be relied on to prove that the perforation and the radius shown are not parallel or colinear. In fact, it appears that the aperture line 73 as well as

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the centerline of the dish-shaped recess 74 are substantially perpendicular to the inner surface (e.g., 76) as well as the outer surface of the diaphragm 72, particularly since there are no angles or statements disclosed in Greenwood to support the contrary.

In the second paragraph on page 7 of the amendment, applicant states regarding Figure 17 that “a person reading Greenwood cannot tell whether each recess 74 is perforated, or which aperture of Figure 15 is sectioned, or from which direction the reader is viewing the section.” The Examiner respectfully disagrees. Figure 15 shows a plurality of perforations or apertures, specifically the dish-like recesses 74 thereof. Figure 17 shows a cross section of one of the apertures, wherein a reasonable interpretation is that all of the apertures are the same as that shown in Figure 17. Finally, it is clear that the “direction a reader is viewing the section” is a cross section, and being that the aperture is round, it does not matter from which cross sectional viewing angle the aperture is viewed.

Regarding claims 15 and 16, the above responses by the Examiner regarding claim 14 apply to applicant's arguments for claims 15 and 16.

Regarding claims 18-20 and 24-26, the Examiner respectfully submits that the disclosure of Greenwood, taken as a whole, teaches and/or suggests the limitations set forth in claims 18-20, at least as best understood. Further, as stated above in the rejection under 35 USC 112, there appears to be no support in the original disclosure for the subject matter set forth in these claims.

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Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404. The examiner's typical work schedule is Monday, Tuesday, Thursday and Friday, and he can be reached during normal business hours on these days.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Allan Shoap, can be reached at (703)308-1082.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers for this group are: formal papers - (703)305-3579; informal/draft papers - (703)305-9835.

A handwritten signature in black ink, appearing to read 'Clark F. Dexter', is positioned above the printed name.

Clark F. Dexter
Primary Examiner
Art Unit 3724

cfd
May 10, 2002